

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GWINN LUDELL YOUNG,

Defendant-Appellant.

UNPUBLISHED

May 25, 2001

No. 221295

Wayne Circuit Court

LC No. 98-011081

Before: Jansen, P.J., and Zahra and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), possession of marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was arrested during the search of a residence where narcotics were sold. He attempted to escape from the residence as the raid began. A police officer testified that he saw defendant discard a handgun and a plastic bag containing crack cocaine and marijuana. Defendant was apprehended, and a large sum of money was confiscated from his person. Defendant admitted that he was present in the residence for the purpose of purchasing and smoking crack cocaine, but denied discarding a handgun as he attempted to escape.

During deliberations, the jury requested the written testimony of a police officer witness. The court, with the agreement of both parties, instructed the jury to use its collective memory to recall the testimony. The jury convicted defendant as noted above. The court sentenced defendant as a third habitual offender to six months to eight years, the maximum term allowable, for the conviction of possession of cocaine. MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v); MCL 769.11(1)(a); MSA 28.1033(1)(a).

Defendant argues that he is entitled to a new trial on the grounds that the trial court improperly denied the jury the opportunity to review the testimony of a witness as requested, that the court abused its discretion by admitting evidence that he was carrying a large sum of money, and that the testimony of the police officers was not credible. We disagree and affirm defendant's convictions. The jury requested that it be allowed to review the transcript of a

witness's testimony. Both the prosecutor and defense counsel agreed that the proper procedure called for the court to instruct the jury to use its collective memory to recall the testimony. The court did not foreclose the possibility that the testimony could be reread or that the jury could review it at some point if necessary. No abuse of discretion occurred. *People v Austin*, 209 Mich App 564, 569; 531 NW2d 811 (1995), modified 455 Mich 439; 566 NW2d 547 (1997); *People v Robbins*, 132 Mich App 616, 621; 347 NW2d 765 (1984). Furthermore, the trial court did not abuse its discretion by admitting evidence that defendant carried a large sum of money. *People v Lugo*, 214 Mich App 699, 709; 542 NW2d 921 (1995). The evidence was relevant to the prosecution's theory that defendant was at the house to purchase crack cocaine, MRE 401, and its probative value was not substantially outweighed by the danger of unfair prejudice. MRE 403. Given that the other evidence against defendant was sufficient to sustain his convictions, evidence that he carried a large sum of money cannot be said to have been outcome determinative. *People v Smith*, 243 Mich App 657, 680; ___ NW2d ___ (2000). Finally, the fact that the testimony of the police officer witnesses was contradictory in some respects does not entitle defendant to a new trial. The jury was entitled to determine the weight of the evidence and the credibility of witnesses. *People v Warren*, 228 Mich App 336, 343; 578 NW2d 692 (1998), modified 462 Mich 415; 615 NW2d 691 (2000).

Defendant argues that he is entitled to resentencing for the reason that the trial court did not appreciate that it had the discretion to impose a lesser maximum term than that authorized by MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v); MCL 769.11(1)(a); MSA 28.1033(1)(a). We disagree and affirm the sentence. The trial court's remarks at sentencing do not indicate that the court took the position that it was required by law to impose the maximum term allowable when sentencing defendant as an habitual offender. Cf. *People v Turski*, 436 Mich 878; 461 NW2d 366 (1990) (the trial court erroneously maintained that it was required by law to increase the defendant's sentence). In the absence of such remarks, we decline to assume that the trial court erroneously believed that it lacked the discretion to impose a lesser maximum term. Under the circumstances, the trial court did not abuse its discretion by imposing the sentence that it did. *People v Hansford (After Remand)*, 454 Mich 320, 323-324, 326; 562 NW2d 460 (1997).

Affirmed.

/s/ Kathleen Jansen
/s/ Brian K. Zahra
/s/ Donald S. Owens